IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Trilok Nath & anr. **vs.** Ramswaroop

S.B. Civil Second Appeal No. 72/2007 against the judgment and decree dated 5.10.2006 passed by the learned Addl. District Judge No.1, Bhilwara in Civil Appeal No. 55/2004.

Date of Judgment: May 14, 2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. Rakesh Arora for the appellants.
Mr. Ravi Bhansali for the respondent-caveator.

BY THE COURT:

Heard learned counsel for the parties.

This appeal is against the concurrent findings recorded by the two courts below against the appellants-tenants. The trial court decreed the suit of the plaintiff for eviction of the appellants-tenants on the ground of personal bona fide necessity and on the ground of sub-letting of the suit property by the appellants. The judgment and decree of the trial court dated 5.8.1984 was challenged by preferring regular first appeal, which was dismissed by the first appellate court vide judgment and decree dated 5.10.2006. Hence this second appeal.

The learned counsel for the appellant submitted that the plaintiff filed the suit as *Karta* of the joint Hindu family but in fact he did not prove that he is Karta of joint Hindu Family, contrary to it has came on record that the said family members are having their separate and independent business, that too in separate premises. In view of the above, the plaintiff has wrongly described himself the Karta of joint Hindu family,therefore, the suit of the plaintiff was not maintainable. The learned counsel for the appellant also submitted that the income tax returns were also filed by all the descendants of the plaintiff's father Kanhaiya Lal separately and, therefore, this fact also proves that the plaintiff is not the Karta of joint Hindu family. It is also submitted that so far as personal bonafide necessity is concerned, not only the plaintiff has several vacant shops with him but that fact has been admitted by the plaintiff's own witness, the brother Shyam Sunder. The same was the statement of the plaintiff also. Not only this but after filing of the suit, the shop which was in possession of the plaintiff's mortgagee, a suit for redemption was filed by all the family members and not by plaintiff alone and, therefore, it is clear that the plaintiff was not the Karta of Joint Hindu family.

According to the learned counsel for the appellants, the courts below committed serious error of law in decreeing the suit of the plaintiff on the ground of sub-letting of the suit premises by defendant no.1 to defendant no.2 who is defendant no.1's brother. In fact defendant no.1 and defendant no.2-the appellants both took the premises on rent and, therefore, both are tenants. However, the according to the learned counsel for the appellant, initially the business was joint and because of dispute amongst the brothers, both started their separate and independent business in suit premises.

It is also submitted that since the trial court now has passed the decree for redemption of mortgage shop on 29.7.1985 in favour of the plaintiff and his brother in Civil Original Suit No.9/2004, certified copy of which has been placed along with copy of application under Order 41 Rule 27,C.P.C., it is clear that the need of the plaintiff has come to an end. The learned counsel for the appellant also relied upon the income tax returns which alleged to have been submitted by the brothers of the alleged joint Hindu family in their independent capacity.

The learned counsel for the appellant also pointed out that Narendra Kumar, for whose need along with the necessity of Shyam

Sunder, the suit was filed, did not appear in the witness box.

I considered the submissions of the learned counsel for the appellants and perused the reasons given by the two courts below.

So far as application under Order 41 Rule 27,C.P.C. is concerned, that deserves to be dismissed only on the ground that no ground has been mentioned in the application under Order 41 Rule 27,C.P.C. for submitting the documents at such belated stage that too in second appeal when the suit of the plaintiff for redemption of the mortgage was decreed by the trial court on 29.7.2005, more than an year before the decree passed by the first appellate court. The appellants were well aware about the fact of mortgage of the suit property by the plaintiff and his family members because that fact has come on record in the evidence of the plaintiff as well as in plaintiff's brother's evidence. Be it as it may be, principally, the plaintiff is entitled to decree on the basis of the cause of action which was in existence on the date of filing of the suit unless the situation makes the factual position irreversible to the extent that the plaintiff cannot utilize the premises for the same purpose and there cannot exist any other ground. It is fact proved by the evidence of the plaintiff that the plaintiff is Karta of joint Hindu family, as he stated on oath before

the court below and the plaintiff's evidence also suggests that in fact the plaintiff is exercising his power as Karta and, therefore, is dealing with the property and it has come in evidence of plaintiff's another brother about the management of the property. In view of the above as well as oral evidence of the defendant with respect to the constitution of plaintiff's family as per his inference is not material. Any member of the joint Hindu family can continue in the joint Hindu family and can acquire his personal property and can establish, settle and run his own personal business without effecting status of his joint Hindu family. In that situation, the fact of having different business of the members of the joint Hindu family is absolutely irrelevant.

So far as locus standi of the plaintiff in filing the suit is concerned, that is proved not only because of the fact that he is Karta of joint Hindu family but also because of the reason that originally the property was let out by the plaintiff's father Kanhaiya Lal and plaintiff as son of original landlord has filed the suit for need of his own family members. Any of the co-sharers can file the suit for eviction of the tenant. Therefore also, there is no substance in the submission of the learned counsel for the appellants about the locus standi of the plaintiff in filing the suit.

Mere passing of the decree of redemption of mortgage by the trial court during pendency of the suit for eviction of the tenant in itself is not very material fact.

It appears from the facts of the case that the two courts below carefully considered each and every aspect of the mater. The two courts below rejected the appellants' case that the suit property was taken on rent by both the appellants and they separated their business only. The courts below clearly held that appellant no.1 is tenant and it is admitted case of the even appellant that both are having separate and independent business, therefore, in the facts and circumstances of the case, if the plaintiff could not prove the consideration for sub-tenancy which might have been between the two brothers then that was the fact not in the knowledge of the plaintiff. If the case of sub-letting is not proved then case of parting with possession stands proved and the case of sub-letting if falls short by its having no consideration, may amount to parting with possession, which is inherently within the plea of sub-letting, therefore, the plaintiff's suit which was decreed by the two courts below, then the decree can be justified on this ground also, apart from the fact that the courts below categorically held that the plaintiff proved the case of sub-letting.

Non-production of one of the person for whose need the suit was filed, was also a fact considered by the two court below and because of that reason the evidence of the plaintiff and his brother cannot be discarded.

In view of the above reason, no substantial question of law is involved in this appeal. Hence the appeal of the appellants is dismissed.

(**PRAKASH TATIA),J.**

mlt.